

## Internal Revenue Service

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Department of the Treasury

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Date:

August 20, 2021

### Legend

Distributing Parent =

Distributing 3 =

Distributing 2 =

Distributing 1 =

Internal Controlled 1 =

Internal Controlled 2 =

External Controlled =

FDRE 1 =

State A =

State B =

Country A =

Country B =

Retained Business =

Business A =

Business B =

Business C =

Business D =

a =

b =

c =

d =

Commercial Arrangements =

Commercial Paper =

Continuing Arrangements =

Intellectual Property Agreements =

Pension Plan =

Pension Plan Amount =

Dear :

This letter responds to your letter dated February 16, 2021, as supplemented on April 12, 2021, July 9, 2021, and July 29, 2021 on behalf of Distributing Parent, its affiliates and its shareholders requesting rulings on certain Federal income tax consequences of a series of transactions (the "Proposed Transactions"). The material information submitted in that request and subsequent correspondence is summarized below.

This letter is issued pursuant to Rev. Proc. 2017-52, 2017-41 I.R.B. 283, as amplified and modified by Rev. Proc. 2018-53, 2018-43 I.R.B. 667, regarding one or more "Covered Transactions" and pursuant to section 6.03(2) of Rev. Proc. 2021-1, 2021-1 I.R.B. 1, regarding one or more significant issues under Section 355 of the Internal Revenue Code (the "Code"). This Office expresses no opinion as to any issue not specifically addressed by the rulings below.

The rulings contained in this letter are based upon facts and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. This office has not verified any of the materials submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

This office has made no determination regarding whether each of the distributions in the Proposed Transactions: (i) satisfies the business purpose requirement of Treas. Reg. §1.355-2(b); (ii) is used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see Section 355(a)(1)(B) and Treas. Reg. §1.355-2(d)); or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation, or any predecessor or successor of the distributing corporation or the controlled corporation, within the meaning of Treas. Reg. § 1.355-8 (see Section 355(e)(2)(A)(ii) and Treas. Reg. §1.355-7).

### **Summary of Facts**

Distributing Parent is a publicly traded State A corporation and is the parent of a worldwide group that includes both domestic and foreign entities. Distributing Parent is also the common parent of an affiliated group of corporations electing to file a consolidated US federal income tax return on a calendar year basis (the “Distributing Parent Consolidated Group”). Distributing Parent is an operating company which directly conducts both Business A and the Retained Business in Country A and indirectly conducts both Business A and the Retained Business outside of Country A.

Distributing Parent wholly owns Distributing 3, a State B corporation and a member of the Distributing Parent Consolidated Group.

Distributing 3 wholly owns Distributing 2, a State B corporation and a member of the Distributing Parent Consolidated Group.

Distributing 2 wholly owns FDRE 1, a Country B entity that is disregarded as separate from Distributing 2 for US federal income tax purposes (a “disregarded entity”).

FDRE 1 owns Distributing 1, a Country B entity that is classified as a corporation for US federal income tax purposes.

Distributing 1 owns directly and indirectly disregarded entities and entities classified as corporations for US federal income tax purposes that conduct Business A and the Retained Business outside of Country A.

For purposes of satisfying the active trade or business requirement of Section 355(b), (i) with respect to the Distributing 1 Spin-Off, Distributing 2 Spin-Off, and the Distributing 3 Spin-Off, respectively (each defined below), each of Distributing 1, Distributing 2, and

Distributing 3 will rely upon Business B conducted by members of its “separate affiliated group” as defined in Section 355(b)(3)(B); (ii) with respect to the External Spin-Off (defined below), Distributing Parent will rely upon Business C conducted by members of its “separate affiliated group” as defined in Section 355(b)(3)(B); and (iii) with respect to each of Distributing 1 Spin-Off, Distributing 2 Spin-Off, the Distributing 3 Spin-Off, and the External Spin-Off, each controlled corporation will rely upon Business D conducted by members of its “separate affiliated group” as defined in Section 355(b)(3)(B). Financial information has been submitted in accordance with Rev. Proc. 2017-52 indicating that each of Business B, Business C, and Business D has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

### **Proposed Transaction**

For what are represented to be valid business reasons, Distributing Parent proposes to undertake the following Proposed Transactions, following the execution of a series of internal restructuring transactions:

1. Distributing 1 formed Internal Controlled 1, a State B limited liability company that is a disregarded entity. Distributing 1 will contribute 100 percent of its interests in entities conducting Business A outside Country A to Internal Controlled 1. Internal Controlled 1 will elect to be classified as a corporation for US federal income tax purposes (the “Internal Controlled 1 Contribution”).
2. Distributing 1 will distribute 100 percent of the outstanding equity interests in Internal Controlled 1 to FDRE 1 (the “Internal Controlled 1 Distribution” and together with the Internal Controlled 1 Contribution, the “Distributing 1 Spin-Off”).
3. In a transaction disregarded for US federal income tax purposes, FDRE 1 will distribute 100 percent of the outstanding equity interests in Internal Controlled 1 to Distributing 2.
4. Distributing 2 formed Internal Controlled 2, a State B corporation. Distributing 2 will contribute 100 percent of the outstanding equity interests in Internal Controlled 1 to Internal Controlled 2 in exchange for Internal Controlled 2 stock (the “Internal Controlled 2 Contribution”).
5. Distributing 2 will distribute 100 percent of the outstanding stock of Internal Controlled 2 to Distributing 3 (the “Internal Controlled 2 Distribution” and together with the Internal Controlled 2 Contribution, the “Distributing 2 Spin-Off”).
6. Distributing 3 will distribute 100 percent of the outstanding stock of Internal Controlled 2 to Distributing Parent (the “Distributing 3 Spin-Off”).

7. Distributing Parent will contribute to Internal Controlled 2 certain intellectual property rights related to Business A, subject to the Intellectual Property Agreements.
8. Distributing Parent formed External Controlled, a State B corporation. External Controlled will borrow approximately \$a from one or more unrelated third-party lenders (the “External Controlled Borrowing”). The External Controlled Borrowing may consist of a combination of term loan(s), high yield notes, and a revolving credit agreement. Distributing Parent will contribute to External Controlled: (i) the stock of Internal Controlled 2, (ii) interests in entities conducting Business A in Country A, and (iii) certain intellectual property rights related to Business A, subject to the Intellectual Property Agreements, in exchange for (i) External Controlled stock, (ii) the assumption of liabilities associated with Business A, including ordinary course trade payables, and (iii) some amount of the External Controlled Borrowing proceeds (the “External Controlled Cash Distribution”) (together, the “External Contribution”).
9. Distributing Parent will distribute at least b percent of the outstanding stock of External Controlled to its public shareholders pro rata (the “External Distribution”, and together with the External Contribution, the “External Spin-Off”). Distributing Parent will dispose of the shares of External Controlled that are not distributed in the External Distribution (the “Retained Shares”) as soon as commercially practicable, but not later than c months after the External Spin-Off.
10. Within d months following the External Distribution, Distributing Parent will use an aggregate amount of cash equal to the External Controlled Cash Distribution to (a) make distributions to its shareholders (which distributions could include regular quarterly dividends to its shareholders); (b) repurchase its outstanding common stock (which repurchases could be made pursuant to its existing stock repurchase plans); (c) repay principal, interest, or premium on tax-exempt bonds, taxable bonds, or Commercial Paper owed by Distributing Parent; (d) satisfy outstanding short-term liabilities whenever incurred; (e) make contributions to the Pension Plan in amounts not exceeding the Pension Plan Amount; or (f) a combination of (a)–(e). Distributing Parent does not intend to set aside or otherwise segregate the External Controlled Cash Distribution. Distributing Parent anticipates that, pending the distribution of an amount of cash equal to the External Controlled Cash Distribution to shareholders and/or creditors, an amount of cash equal to the External Controlled Cash Distribution will be invested and/or otherwise used.

In connection with the Proposed Transactions, Distributing Parent and External Controlled (or their respective affiliates, as applicable) will enter into Continuing Arrangements and Commercial Arrangements.

### **Representations**

The following representations have been made with respect to the Proposed Transactions:

#### The Distributing 1 Spin-Off

Except as set forth below, Distributing Parent has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52 with respect to the Distributing 1 Spin-Off.

1. Distributing Parent has made the following alternative representations: 3(a), 8(b), 11(a), 15(b), 22(a), 31(a), and 41(a).
2. Distributing Parent has not made the following representations, which do not apply to the Distributing 1 Spin-Off: 7, 17, 18, 19, 20, 24, 25, 35, 39, 40, and 43.

#### The Distributing 2 Spin-Off

Except as set forth below, Distributing Parent has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52 with respect to the Distributing 2 Spin-Off.

1. Distributing Parent has made the following alternative representations: 3(a), 8(a), 11(a), 15(b), 22(a), 31(a), and 41(a).
2. Distributing Parent has not made the following representations, which do not apply to the Distributing 2 Spin-Off: 7, 17, 18, 19, 20, 24, 25, 35, 39, and 40.

#### The Distributing 3 Spin-Off

Except as set forth below, Distributing Parent has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52 with respect to the Distributing 3 Spin-Off.

1. Distributing Parent has made the following alternative representations: Representations 3(a), 8(a), 11(a), 15(b), 31(a), and 41(a).
2. Distributing Parent has not made the following representations, which do not apply to the Distributing 3 Spin-Off: 7, 17, 18, 19, 20, 22, 24, 25, 26, 35, and 39.

#### The External Spin-Off

Except as set forth below, Distributing Parent has made all of the representations in section 3 of the Appendix to Rev. Proc. 2017-52 with respect to the External Spin-Off.

1. Distributing Parent has made the following alternative representations: 3(a), 8(b), 11(a), 15(b), 22(b), 31(a), and 41(a).

2. Distributing Parent has not made the following representations, which do not apply to the External Spin-Off: 7, 20, 24, 25, 39, and 40.

3. Distributing Parent has made the following modified representations:

Representation 23: Other than with respect to third-party receivables arising in the ordinary course of business, the External Spin-Off does not involve and will not result in a situation in which one party recognizes income but another party recognizes the deductions associated with such income or a situation in which one party owns Property but another party recognizes the income associated with such Property.

Representation 32: No intercorporate debt will exist between Distributing Parent and External Controlled at the time of, or subsequent to, the External Distribution, except for amounts payable under the Continuing Arrangements or liabilities arising in the ordinary course of business.

Representation 33: Payments made in connection with all continuing transactions, if any, between Distributing Parent and External Controlled will be for fair market value based on arm's-length terms, except as contemplated by the Continuing Arrangements.

Representation 46: External Controlled will not issue stock or securities to a person other than Distributing Parent in anticipation of the External Distribution, other than potentially pursuant to the External Controlled Borrowing.

Except as set forth below, Distributing Parent has made all of the representations in section 3.04 of Rev. Proc. 2018-53 with respect to the External Spin-Off.

4. Distributing Parent has made the following modified representations:

Representation 4: Except for ordinary course liabilities and Commercial Paper, Distributing Parent incurred the Distributing Parent debt that will be assumed or satisfied pursuant to the External Spin-Off (a) before the request for any relevant ruling is submitted and (b) no later than 60 days before the earliest of the following dates: (i) the date of the first public announcement (as defined in §1.355-7(h)(10)) of the External Spin-Off or a similar transaction, (ii) the date of the entry by Distributing Parent into a binding agreement to engage in the External Spin-Off or a similar transaction, and (iii) the date of approval of the External Spin-Off or a similar transaction by the board of directors of Distributing Parent.

Representation 6: There are one or more substantial business reasons for any delay in satisfying Distributing Parent debt with the External Controlled Cash Distribution beyond 30 days after the External Distribution. All of the Distributing



Parent debt that will be satisfied with the External Controlled Cash Distribution will be satisfied within d months after the External Distribution.

Distributing Parent has made the following additional representations:

5. Distributing Parent will hold the Retained Shares following the External Distribution to improve its liquidity, strengthen its balance sheet, and achieve its desired leverage target, as well as increase equity research coverage with respect to External Controlled.

6. None of Distributing Parent's directors or officers will serve as directors or officers of External Controlled as long as Distributing Parent retains the Retained Shares.

7. Any Retained Shares will be sold as soon as commercially practicable consistent with the business purpose for the retention, but in any event, not later than c months after the External Distribution.

8. Distributing Parent will vote the Retained Shares in proportion to the votes cast by External Controlled's other shareholders and will grant External Controlled a proxy for the Retained Shares requiring this manner of voting.

### **Rulings**

Based solely on the information and representations submitted, we rule as follows regarding the Proposed Transactions:

#### **The Distributing 1 Spin-Off**

1. The Internal Controlled 1 Contribution, together with the Internal Controlled 1 Distribution (i.e., the Distributing 1 Spin-Off), will be a "reorganization" under Section 368(a)(1)(D) to which Section 355 applies. Distributing 1 and Internal Controlled 1 will each be "a party to a reorganization" within the meaning of Section 368(b).
2. Distributing 1 will recognize no gain or loss on the transfer of assets in the Internal Controlled 1 Contribution. Sections 361(a) and 357(a).
3. Internal Controlled 1 will recognize no gain or loss on the receipt of assets in the Internal Controlled 1 Contribution. Section 1032(a).
4. Internal Controlled 1's basis in each asset received from Distributing 1 in the Internal Controlled 1 Contribution will equal the basis of such asset in the hands of Distributing 1 immediately before the Internal Controlled 1 Contribution. Section 362(b).

5. Internal Controlled 1's holding period in each asset received from Distributing 1 in the Internal Controlled 1 Contribution will include the holding period of such asset held by Distributing 1. Section 1223(2).
6. Distributing 1 will recognize no gain or loss on the distribution of all of the Internal Controlled 1 stock to Distributing 2 (through FDRE 1) in the Internal Controlled 1 Distribution. Section 361(c).
7. Distributing 2 will recognize no gain or loss (and no amount will be includible in its income) on the receipt of Internal Controlled 1 stock in the Internal Controlled 1 Distribution. Section 355(a)(1).
8. The aggregate basis of the Internal Controlled 1 stock and the Distributing 1 stock in the hands of Distributing 2 immediately after the Internal Controlled 1 Distribution will equal the aggregate basis of the Distributing 1 stock held by Distributing 2 immediately before the Internal Controlled 1 Distribution, allocated between the stock of Distributing 1 and Internal Controlled 1 in proportion to the fair market value of each immediately following the Internal Controlled 1 Distribution in accordance with Reg. §1.358-2(a)(2)(iv). Section 358(b)(2) and (c).
9. Distributing 2's holding period in the Internal Controlled 1 stock received in the Internal Controlled 1 Distribution will include the holding period of the Distributing 1 stock held by Distributing 2 with respect to which the Internal Controlled 1 Distribution is made, provided that such Distributing 1 stock is held as a capital asset on the date of the Internal Controlled 1 Distribution. Section 1223(1).
10. Earnings and profits will be allocated between Distributing 1 and Internal Controlled 1 in accordance with Section 312(h) and Reg. §1.312-10(a).

#### The Distributing 2 Spin-Off

11. The Internal Controlled 2 Contribution, together with the Internal Controlled 2 Distribution (i.e., the Distributing 2 Spin-Off), will be a "reorganization" under Section 368(a)(1)(D) to which Section 355 applies. Distributing 2 and Internal Controlled 2 will each be "a party to a reorganization" within the meaning of Section 368(b).
12. Distributing 2 will recognize no gain or loss on the transfer of the Internal Controlled 1 stock to Internal Controlled 2 in the Internal Controlled 2 Contribution. Section 361(a).
13. Internal Controlled 2 will recognize no gain or loss on the receipt of the Internal Controlled 1 stock in the Internal Controlled 2 Contribution. Section 1032(a).
14. Internal Controlled 2's basis in the Internal Controlled 1 stock received from Distributing 2 in the Internal Controlled 2 Contribution will equal the basis of the

Internal Controlled 1 stock in the hands of Distributing 2 immediately before the Internal Controlled 2 Contribution. Section 362(b).

15. Internal Controlled 2's holding period in the Internal Controlled 1 stock received from Distributing 2 in the Internal Controlled 2 Contribution will include the holding period of such stock held by Distributing 2. Section 1223(2).
16. Distributing 2 will recognize no gain or loss on the distribution of all of the Internal Controlled 2 stock to Distributing 3 in the Internal Controlled 2 Distribution. Section 361(c).
17. Distributing 3 will recognize no gain or loss (and no amount will be includible in its income) on the receipt of Internal Controlled 2 stock in the Internal Controlled 2 Distribution. Section 355(a)(1).
18. The aggregate basis of the Internal Controlled 2 stock and the Distributing 2 stock in the hands of Distributing 3 immediately after the Internal Controlled 2 Distribution will equal the aggregate basis of the Distributing 2 stock held by Distributing 3 immediately before the Internal Controlled 2 Distribution, allocated between the stock of Distributing 2 and Internal Controlled 2 in proportion to the fair market value of each immediately following the Internal Controlled 2 Distribution in accordance with Reg. §1.358-2(a)(2)(iv). Section 358(b)(2) and (c).
19. Distributing 3's holding period in the Internal Controlled 2 stock received in the Internal Controlled 2 Distribution will include the holding period of the Distributing 2 stock held by Distributing 3 with respect to which the Internal Controlled 2 Distribution is made, provided that such Distributing 2 stock is held as a capital asset on the date of the Internal Controlled 2 Distribution. Section 1223(1).
20. Earnings and profits will be allocated between Distributing 2 and Internal Controlled 2 in accordance with Section 312(h), and Reg. §§1.312-10(a) and 1.1502-33.

#### The Distributing 3 Spin-Off

21. Distributing 3 will recognize no gain or loss on the distribution of all of the Internal Controlled 2 stock to Distributing Parent in the Distributing 3 Spin-Off. Section 355(c).
22. Distributing Parent will recognize no gain or loss (and no amount will be includible in its income) on the receipt of Internal Controlled 2 stock in the Distributing 3 Spin-Off. Section 355(a)(1).
23. The aggregate basis of the Internal Controlled 2 stock and the Distributing 3 stock in the hands of Distributing Parent immediately after the Distributing 3 Spin-Off will equal the aggregate basis of the Distributing 3 stock held by Distributing

Parent immediately before the Distributing 3 Spin-Off, allocated between the stock of Distributing 3 and Internal Controlled 2 in proportion to the fair market value of each immediately following the Distributing 3 Spin-Off in accordance with Reg. §1.358-2(a)(2)(iv). Section 358(b)(2) and (c).

24. Distributing Parent's holding period in the Internal Controlled 2 stock received in the Distributing 3 Spin-Off will include the holding period of the Distributing 3 stock held by Distributing Parent with respect to which the Distributing 3 Spin-Off is made, provided that such Distributing 3 stock is held as a capital asset on the date of the Internal Controlled 2 Distribution. Section 1223(1).
25. Earnings and profits of Distributing 3 and Internal Controlled 2 will be adjusted in accordance with Section 312(h), and Reg. §§1.312-10(b) and 1.1502-33.

#### The External Spin-Off

26. The External Contribution, together with the External Distribution (i.e., the External Spin-Off), will be a "reorganization" under Section 368(a)(1)(D) to which Section 355 applies. Distributing Parent and External Controlled will each be "a party to a reorganization" within the meaning of Section 368(b).
27. Distributing Parent will recognize no gain or loss on the transfer of assets to External Controlled in exchange for External Controlled stock, the assumption of liabilities, and the External Controlled Cash Distribution in the External Contribution. Sections 361(b) and 357(a).
28. External Controlled will recognize no gain or loss on the receipt of the assets in the External Contribution. Section 1032(a).
29. External Controlled's basis in each asset received from Distributing Parent in the External Contribution will equal the basis of such asset in the hands of Distributing Parent immediately before the External Contribution. Section 362(b).
30. External Controlled's holding period in each asset received from Distributing Parent in the External Contribution will include the holding period of such asset held by Distributing Parent. Section 1223(2).
31. Distributing Parent will recognize no gain or loss on the distribution of External Controlled stock in the External Distribution. Section 361(c).
32. Distributing Parent's shareholders will recognize no gain or loss (and no amount will be includible in their income) on the receipt of External Controlled stock in the External Distribution. Section 355(a)(1).
33. The aggregate basis of the Distributing Parent stock and the External Controlled stock in the hands of each Distributing Parent shareholder immediately after the

External Distribution (including any fractional share interest in External Controlled Stock to which the shareholder may be entitled) will equal the aggregate basis of the Distributing Parent stock held by such Distributing Parent shareholder immediately before the External Distribution, allocated between the stock of External Controlled and Distributing Parent in proportion to the fair market value of each immediately following the External Distribution in accordance with Reg. §1.358-2(a)(2)(iv). Section 358(b)(2) and (c).

34. The holding period of the External Controlled stock received by each Distributing Parent shareholder in the External Distribution (including any fractional share interest in Controlled Stock to which the shareholder may be entitled) will include the holding period of the Distributing Parent stock held by such shareholder, provided that such Distributing Parent stock was held as a capital asset on the date of the External Distribution. Section 1223(1).
35. Earnings and profits will be allocated between External Controlled and Distributing Parent in accordance with Section 312(h), and Reg. §§1.312-10(a) and 1.1502-33(e)(3).
36. The receipt by Distributing Parent shareholders of cash in lieu of fractional shares of External Controlled stock will be treated for federal income tax purposes as if the fractional shares had been distributed to the Distributing Parent shareholders as part of the External Distribution and then had been disposed of by such shareholders for the amount of such cash in a sale or exchange. The gain (or loss) recognized, if any (determined using the bases allocated to the fractional shares in ruling 33), will be treated as capital gain (or loss), provided the stock was held as a capital asset by the selling shareholder. Section 1001. Such gain (or loss) will be short-term or long-term capital gain (or loss), provided that such Distributing Parent stock was held as a capital asset on the date of the External Distribution (determined using the holding period provided in ruling 34).
37. Following the External Spin-Off, External Controlled will not be a successor of Distributing Parent for purposes of Section 1504(a)(3). Therefore, External Controlled and its direct and indirect subsidiaries that are “includible corporations” under Section 1504(b) and satisfy the ownership requirements of Section 1504(a)(2) will be members of an affiliated group of corporations entitled to file a consolidated federal income tax return with External Controlled as the common parent.
38. The retention of the Retained Shares is not in pursuance of a plan having as one of its principal purposes the avoidance of US federal income tax within the meaning of Section 355(a)(1)(D)(ii).
39. The Pension Plan will be treated as a creditor of Distributing Parent to the extent of the Pension Plan Amount for purposes of Section 361(b)(3).

40. Any payments or transfers made between any of Distributing Parent and External Controlled and their respective affiliates under any of the Continuing Arrangements regarding subsequent property transfers, or payment of liabilities, indemnities, or other obligations that (i) have arisen or will arise for a taxable period ending on or before the External Distribution or for taxable year beginning before and ending after the External Distribution and (ii) will not become fixed and ascertainable until after the External Distribution will be characterized in a manner consistent with the proper treatment if such payments or transfers had occurred immediately before the External Distribution pursuant to the External Spin-Off. See *Arrowsmith v. Commissioner*, 344 U.S. 6 (1952) and Rev. Rul. 83-73, 1983-1 C.B. 84.

### **Caveats**

No opinion is expressed about the federal income tax treatment of the Proposed Transactions under other provisions of the Code or regulations or the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transactions that are not specifically covered by the above rulings.

### **Procedural Matters**

This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that this letter may not be used or cited as precedent. A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of this ruling letter.

Pursuant to the power of attorney on file in this matter, a copy of this letter is being sent to your authorized representatives.

Sincerely,

*Mark Weiss*

Mark Weiss  
Chief, Branch 2  
Office of Associate Chief Counsel (Corporate)

cc: